

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

MICHAEL R. TUTTLE

PLAINTIFF

v.

Civil No. 5:16-CV-05294

CORPORAL HAIL and DEPUTY
HAGGARD

DEFENDANTS

ORDER

Plaintiff proceeds in this matter *pro se* and *in forma pauperis* pursuant to 42 U.S.C. § 1983. Currently before the Court is Plaintiff's failure to obey a Court Order and failure to prosecute this case.

I. BACKGROUND

On May 17, 2018, Defendants filed their Motion for Summary Judgment. (ECF No. 45). On May 18, 2018, the Court entered an Order directing Plaintiff to file his Response to the Summary Judgment Motion by June 8, 2018. (ECF No. 48). In the Order, Plaintiff was advised that failure to timely and properly respond would result in either Defendants' facts being deemed admitted or in the dismissal of his case. (*Id.*). The Order was not returned as undeliverable. To date, Plaintiff has not responded. Plaintiff has not communicated with the Court since he filed his Amended Complaint on July 19, 2017. (ECF No. 32).

II. LEGAL STANDARD

Although *pro se* pleadings are to be construed liberally, a *pro se* litigant is not excused from complying with substantive and procedural law. *Burgs v. Sissel*, 745 F.2d 526, 528 (8th Cir. 1984). The local rules state in pertinent part:

It is the duty of any party not represented by counsel to promptly notify the Clerk and the other parties to the proceedings of any change in his or her address, to

monitor the progress of the case, and to prosecute or defend the action diligently. . . . If any communication from the Court to a *pro se* plaintiff is not responded to within thirty (30) days, the case may be dismissed without prejudice. Any party proceeding *pro se* shall be expected to be familiar with and follow the Federal Rules of Civil Procedure.

Local Rule 5.5(c)(2).

Additionally, the Federal Rules of Civil Procedure specifically contemplate dismissal of a case on the grounds that the plaintiff failed to prosecute or failed to comply with orders of the court. Fed. R. Civ. P. 41(b); *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962) (stating that the district court possesses the power to dismiss *sua sponte* under Rule 41(b)). Pursuant to Rule 41(b), a district court has the power to dismiss an action based on “the plaintiff’s failure to comply with any court order.” *Brown v. Frey*, 806 F.2d 801, 803-04 (8th Cir. 1986) (emphasis added).

III. ANALYSIS

Plaintiff has failed to comply with a Court Order. Plaintiff has failed to prosecute this matter. Accordingly, pursuant to Federal Rule of Civil Procedure 41(b) and Local Rule 5.5(c)(2) Plaintiff’s Complaint should be dismissed without prejudice for failure to comply with the Court’s Local Rules and Orders and failure to prosecute this case.

For these reasons, IT IS ORDERED that Plaintiff’s claims are DISMISSED WITHOUT PREJUDICE.

IT IS SO ORDERED this 2nd day of July 2018.

/s/ P. K. Holmes, III

P. K. HOLMES, III
CHIEF U.S. DISTRICT JUDGE